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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,782	02/28/2002	Carol L. Colrain	50277-1957	8991

42425 7590 03/12/2007
HICKMAN PALERMO TRUONG & BECKER/ORACLE
2055 GATEWAY PLACE
SUITE 550
SAN JOSE, CA 95110-1089

EXAMINER

LE, DEBBIE M

ART UNIT PAPER NUMBER

2168

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/086,782

Applicant(s)

COLRAIN ET AL.

Examiner

DEBBIE M. LE

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2168

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/10/06, 9/8/06, 11/8/06, 11/17/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

In view of the Appeal Brief filed on 12/08/06, prosecution is hereby reopened. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

1) file a reply under 37 CFR 1.111 (if this office action is a non-final) or a reply under 37 CFR 1.113 (if this office is a final); or

2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Specification

The disclosure, pages 9 and 14, Applicants are reminded to update the blank space U.S. Patent Application, Serial No. "_____" to their appropriate serial nos.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 47, 50, 55, and 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The above claims recites phrase "may be" "may not" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). To further assist the Applicant to understand the basis of the rejection, the Applicant is directed to MPEP § 2106 II(c).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 53-60 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. On page 11, lines 27-28 of the specification applicant has provided evidence that applicant intends the medium include signals as such is drawn to a form of energy (carrier wave). Energy is not one of the four categories of invention and therefore these claims are not statutory. Energy is not a series of steps or acts and thus is not a process. Energy is not a physical article or object and as such is not a machine or manufacture. Energy is not combination of

substances and therefore not a composition of matter. Thus, these claims fail to fall within the four categories of invention.

To expedite a complete examination of the instant application the claims rejected under 35 U.S.C. 101 non-statutory above are further rejected as set forth below in anticipation of applicant amending these claims to place them within the four categories of invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 45-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolff (US Patent 6,185,601 B1) in view of Khalil et al (US Patent 6,430,698 B1).

As per claim 45, Wolff discloses a machine-implemented method, comprising the steps of:

requests to a service provided by a first node within a cluster, wherein said first node is configured to provide said service to requests (Fig. 1a, #104a-106a0, col. 2, lines 64-65, as sending an I/O request to a first server node for at least one resource among the plurality of server nodes);

in response to said first node becoming unavailable (col. 2, line 66, as determining an I/O failure of the first server node), automatically configuring a second node of the cluster to respond to requests (col. 2-3, lines 67-2, as redirecting request from the at least one resource to another server node among the plurality of server nodes, in response to the determining act);

Wolff teaches after said first node becomes unavailable, an alternate node is re-mapping in response to an overload or failure condition of the first node (col. 5, lines 39-48).

Wolff does not explicitly teach a service requestor using an Internet Protocol (IP) address to address requests, the service requestor using said IP address to send address a message to said cluster related to said service; and in response to said message, said second node of the cluster sending a response that indicates an error condition. Khalil discloses a service requestor using an Internet Protocol (IP) address to address requests (col. 6, lines 63-67, col. 8, lines 18-19, as virtual distributed home agent protocol (hereafter "VDHAP") identifies the home agent IP address for the home

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agent 16), and the service requestor using said IP address to send address a message to said cluster related to said service (Fig. 10, col. 8, lines 2-16, as VDHAP sends heartbeat message to other home agent 16 in the same home link, wherein the message contains source address and destination address information); and in response to said message, said second node of the cluster sending a response that indicates an error condition (col. 8, lines 66-67, col. 9, lines 1-14, as recovery information ack message is send by a failure recover agent in response to a recovery information request message). Thus, it would have been obvious to one of ordinary skill on the art at the time invention was made to combine the teachings of the cited references to combine the teachings of the cited references to implement the step of using IP address to address request to a service provider and using IP address to address message and sending a response message indicate an error condition as disclosed by Khalil because it would enable Wolff's system to manage and provide efficient communication and utilization of resources between devices and other system, such as when a mobile computer system or device has moved from location to another location (Khalil, col. 1, lines 13-17), and/or provide backup and recovery home agent services to mobile node(s) in the event that a failure or error has occurred at a home agent (Khalil, col. 8, lines 51-55).

As per claim 46, Khalil teaches upon receiving said response, the service requestor identifying a second IP address to access said service; and the service requestor using said second IP address to send address a second message to said cluster related to said service (col. 9, lines 8-15).

As per claim 47, Wolff teaches storing, at the first node, information identifying one or more nodes of the cluster as being standby nodes, wherein each of the one or more standby nodes may be instructed to provide the service if the first node becomes unavailable (Fig. 5a-5b, col. 19, lines 45-67, col. 20, lines 1-35).

As per claim 48, Wolff teaches in response to said first node becoming unavailable, determining if said first node is configured to allow the service to be provided by another node of the cluster (col. 15, lines 19-22).

As per claim 49, Wolff teaches in response to determining said first node is configured to allow the service to be provided by another node of the cluster, determining a standby node of the cluster to perform the service; and instructing the standby node to perform the service (col. 10, lines 7-36).

As per claim 50, Wolff teaches in response to said first node becoming unavailable, instructing a standby node of the cluster to perform the service; determining if the plurality of services provided by the standby node may be provided by another node of the cluster; and if the plurality of services provided by the standby node may not be provided by another node of the cluster, configuring the standby node to disallow the plurality of services to be provided by another node of the cluster (col. 20, lines 65-67, col. 21, lines 1-22).

As per claim 51, Wolff teaches in response to configuring the standby node to disallow the plurality of services to be provided by another node of the cluster, issuing an alert to a user (col. 11, lines 38-40, col. 12, lines 26-31).

As per claim 52, Wolff further teaches wherein said first node comprises

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a monitor process, and wherein said monitor process is configured to detect if said first node becoming unavailable (col. 5, lines 39-48).

Claim 53 has similar limitations as recited in claim 35, therefore, it is rejected under the same rationale.

Claims 54-60 recites similar limitation as claim 46-52, therefore, they are rejected by the same subject matter.

Conclusion


The prior art made of record, listed on form PTO-892, and not relied upon, if any, is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBBIE M. LE whose telephone number is (571) 272-4111. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim Vo can be reached on (571) 272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DEBBIE LE
PRIMARY EXAMINER

2/26/07